

**Ashley M. Gjovik, JD**

*In Propria Persona*

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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

**ASHLEY M. GJOVIK**, *an individual*,

Plaintiff,

vs.

**APPLE INC.**, a corporation,

Defendant.

CAND No. 3:23-CV-04597-EMC

9th Cir No.: 24-6058

**PLAINTIFF’S REQUEST FOR  
JUDICIAL NOTICE  
& OPPOSITION TO  
DEFENDANTS’ REQUEST FOR  
JUDICIAL NOTICE**

*In Support of Plaintiff’s  
Opposition to Defendant’s  
Motions to Dismiss*

**Motion Hearing:  
Dept: Courtroom 5 (& Zoom)  
Judge: Honorable Edward M. Chen  
Date: February 21, 2025  
Time: 1:30 PM PT**

## I. NOTICE & JUDICIAL NOTICE

1. Plaintiff respectfully submits this response to Defendant's Request for Judicial Notice of the City of Santa Clara's building permit portal. Defendant argues that because the building permits related to semiconductor fabrication tools were publicly available through the city's website, the Plaintiff should have known about the toxic emissions from the facility, and therefore, there is no basis for tolling the statute of limitations for the toxic tort claims. Plaintiff objects to the request for the following reasons.

2. "In ruling on a 12(b)(6) motion, a court may generally consider only allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice." *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007) (*per curiam*) (citing *Jacobson v. Schwarzenegger*, 357 F. Supp. 2d 1198, 1204 (C.D. Cal. 2004)). A court "may judicially notice a fact that is not subject to reasonable dispute because it" either (1) "is generally known within the trial court's territorial jurisdiction," or (2) "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Civ. P. 201(b). Because Plaintiff does not object to the request for judicial notice and the documents are appropriate subjects of judicial notice, the Court grants Defendants' RJN.<sup>1</sup> *Wells v. Lakeview Loan Servicing, LLC*, No. CV 23-4796 PA (JPRX), 2023 WL 8254485, at \*2 (C.D. Cal. Sept. 26, 2023).

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<sup>1</sup> See, e.g., *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (court records); *Harticon v. U.S. Bank Trust, N.A.*, No. 2:18-CV-00277 KJM (DBx), 2019 WL 1041330, at \*3 (E.D. Cal. Mar. 5, 2019) (documents filed in county recorder's office).

## 1    **II.    THE IIED CLAIM ACCRUES WHEN PLAINTIFF LEARNED** 2    **OF THE EXPOSURE**

3            3.        First, the Defendant's argument regarding public access to building  
4    permit information is irrelevant to the accrual date for Plaintiff's IIED claim.  
5    Under California law, the statute of limitations for an IIED claim begins to run  
6    when the Plaintiff learns of the harm or injury. In this case, the IIED claim is  
7    based on the emotional distress caused by the discovery of the toxic exposure,  
8    which Plaintiff only became aware of in February 2024. The Plaintiff cannot have  
9    a claim for emotional distress related to chemical exposure when the Plaintiff was  
10    unaware of the exposure itself. Thus, the IIED claim did not accrue until February  
11    2024, when Plaintiff was made aware of the extent of the harm caused by the toxic  
12    emissions. This is the point at which the claim for IIED arises, and any suggestion  
13    otherwise is without merit.  
14

## 15 **III.    DEFENDANT'S ARGUMENT REGARDING PUBLIC ACCESS** 16 **TO BUILDING PERMITS IS WITHOUT MERIT**

17            4.        Defendant's argument about the public availability of building permit  
18    information is also flawed. First, Defendant's submission of documents obtained  
19    from the City of Santa Clara's website does not establish that the information was  
20    readily available in the form necessary for Plaintiff to understand the significance  
21    of the semiconductor fabrication tools. The documents submitted by Defendant  
22    were only retrieved today, and Defendant has not provided any evidence of what  
23    was available on the City's website in prior years—when Plaintiff was unaware of  
24    the toxic emissions from 3250 Scott. [See [Exhibit A](#)].  
25

26            5.        In order to properly respond to Defendant's argument, Plaintiff  
27    would be required to introduce its own public records and evidence to demonstrate  
28    what information was available at relevant times. However, as a result of

1 Defendant's bad faith litigation tactics, Plaintiff's requests for such evidence were  
2 repeatedly denied by the court. The request for judicial notice should not be  
3 granted simply because Defendant claims that documents are publicly available.

4 6. The documents offered by Defendant do not resolve any legal  
5 question in this case. A request for judicial notice is appropriate only when a  
6 document can affirmatively answer a specific legal question. Here, the building  
7 permits do not answer the legal question of whether the Plaintiff was aware of the  
8 toxic emissions in time to meet the statutory deadlines for filing a toxic tort claim.  
9 However, in case Defendant's request is accepted, Plaintiff also includes the  
10 instructions from the city website for requesting records, which says nothing about  
11 the portal the Defendant points to, and in fact, directs people to the Public  
12 Records Request portal instead. [[Exhibit B](#)].  
13

14 **IV. THE REASONABLE PERSON STANDARD IS A FACTUAL**  
15 **DETERMINATION, NOT A MATTER OF LAW FOR A**  
16 **12(B)(6) MOTION**

17 7. Furthermore, the issue of whether Plaintiff, as a reasonable person,  
18 should have been aware of the toxic emissions from the facility is a question of  
19 fact, not an issue that can be resolved on a motion to dismiss. The reasonable  
20 person standard depends on the circumstances, which include the unique nature  
21 of semiconductor fabrication and the historical offshore outsourcing of such  
22 operations in the U.S. These facts must be explored through discovery, expert  
23 witness testimony, and other factual evidence, making it inappropriate to resolve  
24 this matter at the 12(b)(6) stage.

25 8. Defendant's argument effectively asks the Court to rule on a factual  
26 issue that requires a deeper investigation into what information was available to  
27 the Plaintiff and how a reasonable person in Plaintiff's position would have  
28

1 responded. The Court cannot make these factual determinations at this early  
2 stage, and judicial notice should not be granted on this basis.

3  
4 **V. PUBLIC ACCESS TO BUILDING PERMITS DOES NOT**  
5 **RESOLVE THE QUESTION OF TOLLING FOR TOXIC TORT**  
6 **CLAIMS**

7 9. As discussed in Plaintiff's Opposition to Defendant's Motion to  
8 Dismiss, Defendant is attempting to use the availability of building permits to bar  
9 tolling of the statute of limitations for toxic tort claims. However, if the Court  
10 were to accept Defendant's argument and deny tolling based on the public  
11 availability of building permits, it would have far-reaching consequences for  
12 thousands of other victims who may have been harmed by similar toxic exposures.  
13 If a building permit search alone is enough to trigger the statute of limitations, it  
14 would unfairly bar individuals from filing their claims, as they may not have known  
15 the full extent of the harm or its cause until much later. Such a ruling would set  
16 an unfair precedent and would prevent many potential victims from seeking  
17 justice. The Court must consider the unique circumstances of this case and deny  
18 Defendant's motion to dismiss and request for judicial notice.

19 **VI. CONCLUSION**  
20

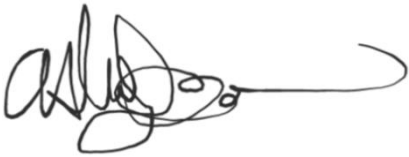
21 10. For the reasons outlined above, Plaintiff respectfully requests that  
22 the Court deny Defendant's Request for Judicial Notice and reject Defendant's  
23 argument that public access to building permits bars tolling of the statute of  
24 limitations for the toxic tort claims. Defendant's attempt to manipulate the facts  
25 and impose a standard that would have serious consequences for thousands of  
26 victims should not be allowed to succeed at this stage of the litigation.

27 I verified the authenticity of each of these documents as described. A true  
28 and correct version of each document is attached. I declare under penalty of

perjury this is true and correct.

Dated: Jan. 31, 2024.

Signature:

A handwritten signature in black ink, appearing to read 'Ashley M. Gjovik', with a long horizontal flourish extending to the right.

---

/s/ Ashley M. Gjovik

*Pro Se Plaintiff*

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**Phone:** (408) 883-4428

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# EXHIBITS

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# EXHIBIT A

*Wayback Archive of Santa Clara City Building Permit Page*



INTERNET ARCHIVE

DONATE

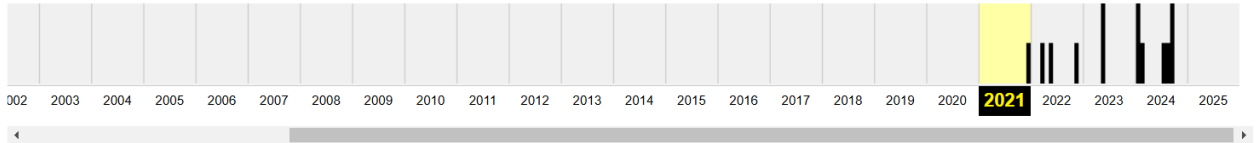
WayBackMachine

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Calendar · Collections · Changes · Summary · Site Map · URLs

Saved 13 times between December 31, 2021 and September 13, 2024.



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Note

This calendar view maps the number of times <https://aca-prod.accela.com/santaclara/Default.aspx> was crawled by the Wayback Machine, *not* how many times the site was actually updated. More info in the [FAQ](#).

[FAQ](#) | [Contact Us](#) | [Terms of Service \(Dec 31, 2014\)](#)



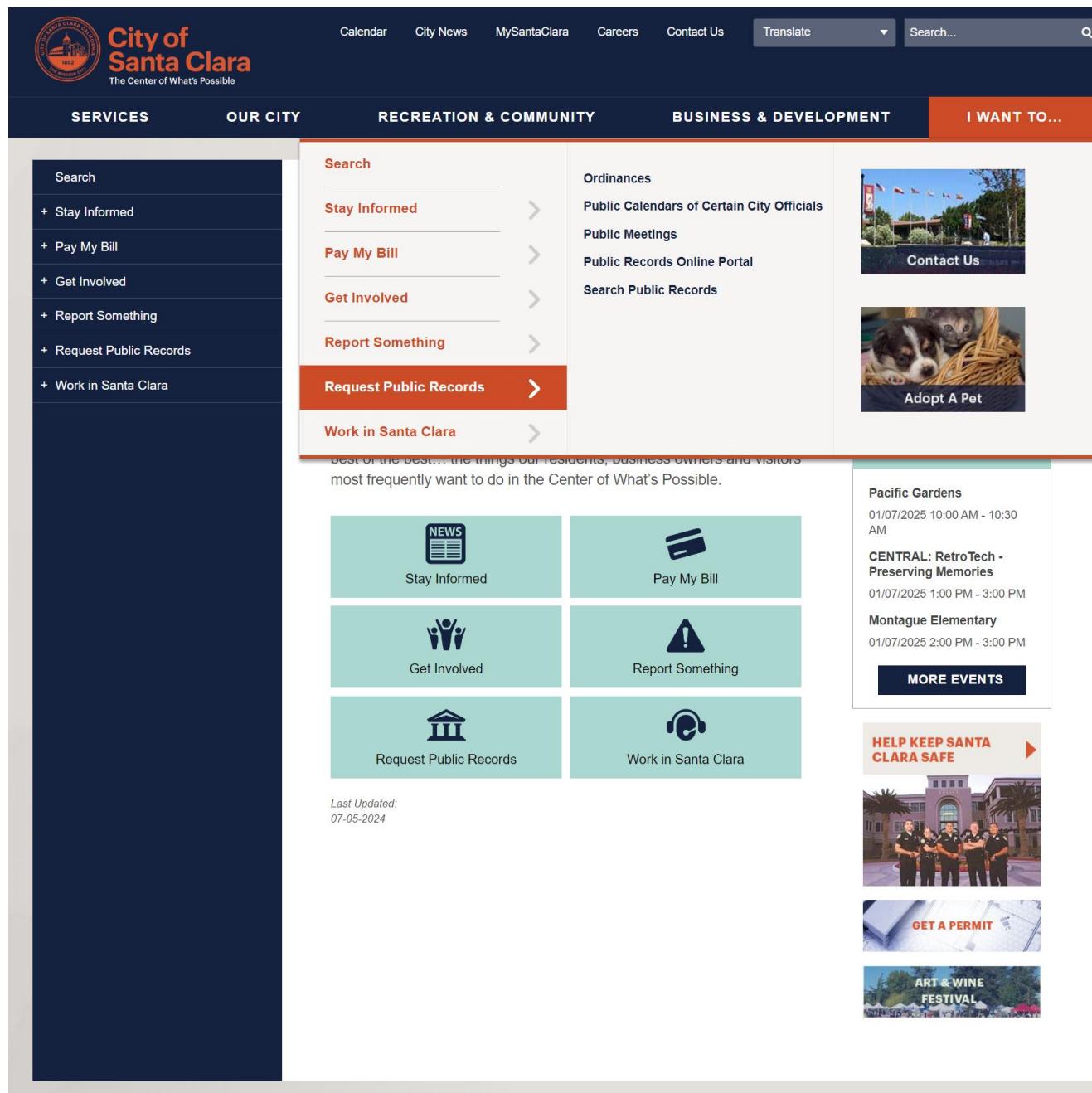
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## EXHIBIT B

*Records search on the city webpage*



<https://www.santaclaraca.gov/i-want-to>

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- Campaign Disclosure Forms and Filings
- Campaign Regulations
- Conflict of Interest Code - FORM 700
- City Code/Charter
- City Council and Stadium Authority Meeting Calendar
- City Meetings
- Find Your Council District
- + Election Information
- + Pathways to Citizenship
- Request Public Records
- Lobbyist Regulations & Forms

Our City » Departments A-F » City Clerk's Office »

## Request Public Records

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The City of Santa Clara understands and supports the public's right to access the public records created and maintained by the City during normal course of business. It is the goal of the City to provide service in a transparent manner, which includes timely access to requested records in accordance with the California Public Records Act (CPRA) Government Code Sections 6250 to 6270. The public can inspect or receive a copy of any record unless the record is exempted from disclosure under the act.

### Submit a Public Records Request Online

Visit the [Santa Clara NextRequest webpage](#) to submit a public records request online.

### Records Available Online

- [Meeting Agendas and Minutes](#)

### To Request Public Records not available Online

- Police Department**
  - Crime Reports (e.g. crime report, domestic violence, arrest report, calls for service, etc.), submit a request via the [Police Public Records Request Online Portal](#)
  - Traffic Collision Report, log onto [LexisNexis](#) or submit a request via the [Police Public Records Request Online Portal](#)
  - For any Police records not included above, submit a request via the [Police Public Records Request Online Portal](#)
  - For Police Department inquiries, contact the Records Unit at (408) 615-4700 or via email at [records@santaclaraca.gov](mailto:records@santaclaraca.gov)
- Fire Department**
  - For Fire Records, visit City of Santa Clara Fire Department or email [fire@santaclaraca.gov](mailto:fire@santaclaraca.gov)
- For all other City Department Records**
  - Submit a request via the [Public Records Request Online Portal](#)

**SUBMIT A PUBLIC RECORDS REQUEST**

- Request in-person at City Clerk's Office, 1500 Warburton Ave., Santa Clara
- Call the City Clerk's Office at 408-615-2220

### Public Records Act Request Logs Archives

For archives of Public Records Act Request Logs for all requests received in 2020, please see one of the links below:

- [OPEN LOG](#)
- [CLOSED LOG](#)

### General Information about Public Records Requests

- Requests will be provided electronically for free, when possible.
- Paper copies are 10 cents per page plus postage costs.
- There is no charge for inspecting records in person.
- Public records are open to in person inspection during regular City office hours, except for City Holidays, and subject to a rule of reason and must be consistent with the efficient functioning of City Offices. Advanced notice is not required however, records may be located off-site, require redaction of confidential information, and may require time to locate as they may be in multiple locations, so it is advisable to contact the City Clerk's Office to make sure records are available before arrival. If not immediately available, the City Clerk's office will set up an appointment for the inspection.
- In order to prevent records from being lost, damaged or destroyed during inspection, City staff may determine the location of, and may monitor the inspection.

Last Updated:  
09-20-2021

27 [https://www.santaclaraca.gov/our-city/departments-a-f/city-clerk-s-](https://www.santaclaraca.gov/our-city/departments-a-f/city-clerk-s-office/request-public-records)  
28 [office/request-public-records](https://www.santaclaraca.gov/our-city/departments-a-f/city-clerk-s-office/request-public-records)

City of Santa Clara

NextRequest

Make request

All requests

Documents

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## Public Records

The City of Santa Clara strives to support the public's right to access the public records created and maintained by the City. It is our goal to provide service in a transparent and accessible manner, which includes timely access and in accordance with the California Public Records Act (CPRA). The public can inspect or receive a copy of any record unless the record is exempted from disclosure under the act.

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Search **6016** requests and counting.

Make Request



Make a new public records request.

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